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Selected Consumer Statutes

Business Opportunities

*Note: Headings are not officially part of the statutes. Italicized terms are not part of the statute. An asterisk * indicates material edited out by staff.*

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Definitions

367.801 DEFINITIONS FOR KRS 367.801 TO 367.819 AND KRS 367.990

As used in KRS 367.801 to 367.819 and KRS 367.990, unless the context requires otherwise:

- (1) "Division" means Division of Consumer Protection of the Office of the Attorney General.
- (2) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, or any other legal entity.
- (3) "Offeror" means a person who is engaged in the business of selling business opportunities including any subsidiary business which affiliates with the offeror for goods or services or locations.
- (4) "Consumer/investor" means a person who has purchased or is solicited for the purchase of a business opportunity.
- (5) "Business opportunity" means the sale or lease, or offer to sell or lease, of any products, equipment, supplies, or services for the purpose of enabling the consumer investor to start a business when:
 - (a) The offeror obtains an initial required consideration of not less than five hundred dollars (\$500) from the purchase or lease of the business opportunity or inventory associated therewith; and
 - (b) The offeror has represented, directly or indirectly, that the consumer/investor will earn, can earn,

or is likely to earn a gross or net profit in excess of the initial required investment paid by the consumer/investor for the business opportunity; or

(c)

1. The offeror has represented that he has knowledge of the relevant market and that the market demand will enable the consumer/investor to earn a profit from the business opportunity; or
2. The offeror has represented that locations will be provided or assistance will be given directly or indirectly to the consumer/investor in finding locations for the use or operation of the business opportunity including, but not limited to, supplying the consumer/investor with names of locator companies, contracting with the consumer/investor to provide assistance with or supply names of or collect a fee on behalf of or for a locator company; or
3. The offeror has represented that there is a guaranteed market or that the offeror will buy back or is likely to buy back any product made, manufactured, produced, fabricated, grown, or bred by the consumer/investor using, in whole or in part, the products, supplies, equipment, or services which were initially sold or offered for sale to the consumer/investor by the offeror.

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Registration, Exemptions

367.805 REGISTRATION OF PERSONS ENGAGED IN SALE OF BUSINESS OPPORTUNITIES; AUTHORITY FOR ADMINISTRATIVE REGULATIONS

(1) It is unlawful for any person to engage in the sale of business opportunities unless prior to the offering the offeror has registered with the division and has furnished a bond pursuant to KRS 367.815(2) and provided all of the following:

- (a) All trade names, assumed names, and all trademarks by which the offeror or the prospective consumer/investor of the business opportunity will be doing business.
- (b) The names, home addresses, and home telephone numbers of the persons and company offering the business opportunity, and the company's directors and chief executive officers, and the names, home addresses, and home telephone numbers of all representatives selling business opportunities in Kentucky.
- (c) A statement as to the length of time the person and company offering the business opportunity has conducted a business of the type being offered both within and without Kentucky.
- (d) A statement as to whether the person or company offering the business opportunity or any of its directors or chief executive officers or sales representatives operating in Kentucky is currently involved in litigation or has been held liable in a civil action by final judgment for having engaged in unfair, false, misleading, or deceptive practices or is currently charged with or has been convicted of or pleaded nolo contendere to a felony involving fraud, embezzlement, fraudulent conversion, or misappropriation of property during the most recent seven (7) year period, or has entered into any agreed settlements or is currently in any bankruptcy proceeding or has been declared bankrupt in any judicial proceeding during the most recent seven (7) year period.
- (e) A statement as to whether the person or the company offering the business opportunity or its

officers, directors, or agents making the offering of the business opportunity has been a party to any legal cause of action brought by a consumer/investor of the business opportunity within the last seven (7) year period and, if so, the name and address of such individual who has brought the legal action.

(f) A statement disclosing the names, addresses, and telephone numbers of all persons who have been sold a business opportunity by the offeror within the last two (2) year period.

(g) A statement listing the names and addresses of any consumer/investor who has requested within the preceding three (3) years that the offeror return his money.

(h) A current audited financial statement of the offeror.

(i) A specimen of each contract proposed for use in connection with the business opportunity.

(j) A full and detailed description of the actual services that the offeror of the business opportunity undertakes to perform for the consumer/investor.

(k) If training is promised by the offeror, a complete description of the training, including length of the training and costs.

(2) The offeror shall immediately notify the division of any material change in information contained in the application for registration and shall make appropriate amendment of the disclosure statement.

(3) The division shall collect, from any offeror required to comply with this section, an initial fee of one hundred fifty dollars (\$150), and an annual renewal fee of fifty dollars (\$50), and an update fee of twenty-five dollars (\$25) for the administration and enforcement of KRS 367.801 to 367.819. Funds so collected shall be credited to a trust or agency account for the administrative purpose of the Attorney General's office, Division of Consumer Protection.

(4) The Attorney General may promulgate administrative regulations as needed to provide for: a hearing, to be conducted in accordance with KRS Chapter 13B, for any business opportunity which the Attorney General initially determines should not be registered or should have registration revoked or suspended; for the establishment of specific standards for the form and content of the disclosure document; and for registration procedures including fee schedules.

367.807 EXEMPTIONS FROM REGISTRATION; AUTHORITY FOR ADMINISTRATIVE REGULATIONS

(1) An offeror is exempt from the provisions of KRS 367.801 to 367.819 and KRS 367.990 when the offeror:

(a) Meets the definition of a franchise as defined in the Federal Trade Commission's Regulation on Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, as set forth in 16 C.F.R. 436 et seq., and has complied with these and filed written notice so stating with the division; or

(b) Offers a security pursuant to KRS 292.313;

(c) Offers an ongoing business for sale; or

(d) Offers a not-for-profit sale of sales demonstration equipment, materials, or samples for use in making sales and not for resale for a total price of \$500 or less.

(2) The Attorney General may promulgate administrative regulations as needed to provide for additional exemptions. Is offering to sell or selling a package franchise as described in KRS 367.801 (7).

367.809 REGISTRATION NUMBER; INCLUSION IN ADVERTISING

- (1) The division, after ascertaining that the applicant has complied with KRS 367.805, shall issue a registration number.
- (2) It shall be unlawful for the registrant to fail to include the registration number in any advertising.

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Certain Representations Prohibited, Disclosures Required

367.811 REPRESENTATION REGARDING POTENTIAL SALE, INCOME, OR PROFIT

It shall be unlawful for any offeror to make any oral or written representation, actual or hypothetical, regarding the business opportunity's potential sales, income, gross or net profit unless such sales, income, or profits are examples based upon the actual earnings made by existing consumer/investors of the business opportunity. Upon request by the division, names and addresses of the consumer/investors shall be made available for verification of the earnings claims. If such actual or hypothetical earnings examples are in excess of the average net earnings realized by all of the consumer/investors of the business opportunity, then there must be a full and complete disclosure of the average net earnings actually realized by all of these consumer/investors.

367.813 DISPLAY OF REGISTRATION

- (1) Prior to the solicitation of potential consumer/investors the offeror shall furnish and display to the potential consumer/investor a copy of the material required to be furnished the division when registering pursuant to KRS 367.805.
- (2) When furnishing the information required by subsection (1) of this section, the offeror shall furnish the prospective consumer/investor with a notice in at least ten (10) point bold-face type, stating that registration with the division does not directly or indirectly imply approval by the division or the Commonwealth of Kentucky of the business opportunity or any of the activities of representatives selling such business opportunities.

367.815 LIABILITY FOR FALSE OR MISLEADING REPRESENTATIONS; BOND OR DEPOSIT TO INSURE VERACITY OF STATEMENTS; MAINTENANCE OF RECORDS

- (1) Any person who offers a business opportunity and makes representations that are false, misleading or deceptive shall be liable to the consumer/investor of such business opportunity in an amount equal to the sum of his actual damages or fifteen hundred dollars (\$1,500), whichever is greater, as well as the cost of the action together with reasonable attorney's fees, as determined by the court.
- (2) (a) All persons registering pursuant to KRS 367.805 shall either furnish a bond by a surety company authorized to do business in the Commonwealth or establish a full cash certificate of deposit with a licensed and insured bank or savings institution located in the Commonwealth to

insure the veracity of all statements contained in the registration. The amount of the bond or certificate of deposit shall be in an amount equal to the total amount of the initial payments under all business opportunity agreements the offeror has entered into in the Commonwealth during the previous year but in no case shall the amount be less than seventy-five thousand dollars (\$75,000). The bond or certificate of deposit shall be in the favor of the Attorney General of Kentucky.

(b) Any person who is damaged by any violation of KRS 367.801 to 367.819, or by the offeror's breach of contract for the business opportunity sale, or of any obligation arising therefrom may bring an action against the bond or certificate of deposit to recover damages suffered, provided that the aggregate liability of the surety or trustee shall be only for the actual damages and shall not exceed the amount of the bond or trust account.

(3) A person who has furnished a bond described in subsection (2) of this section may petition the division for release of the bond by submitting a verified statement that such person has not offered business opportunities in the state for the last five (5) years.

(4) Any offeror of a business opportunity who has offered or sold in this state shall maintain a complete set of books, records, and accounts of its business opportunity sales. The sale documents shall be maintained on each transaction for a period of four (4) years after the date of agreement. The offeror shall make the books and records available to the division upon demand at a location within the state.

367.816 AGREEMENT OR ARRANGEMENT FOR A BUSINESS OPPORTUNITY; REQUIREMENTS; EFFECT OF NONCOMPLIANCE; NONWAIVERABILITY

(1) Every agreement or arrangement for a business opportunity shall be in writing. Copies of the completed agreement and all other documents the offeror requires the consumer/investor to sign shall be given to the consumer/investor at the time they are signed.

(2) Each business opportunity agreement shall set forth in easily legible form all of the following:

(a) The terms and conditions of all payments including the amount owed and a complete schedule for total payment;

(b) A detailed description of the acts or services the offeror or its affiliate undertake to perform for the consumer/investor;

(c) The offeror's name, telephone number, principal business address, by street and number, and the name and address of its agent in this state authorized to receive service of process;

(d) Whether the offeror is doing business as a corporation, partnership, or otherwise, and the state of its incorporation or organization;

(e) The estimated delivery dates of each installment and whether the items are to be delivered to the consumer/investor or are to be placed by the offeror at locations owned or managed by persons other than the consumer/investor;

(f) If applicable, the terms of the "buy-back" or "security" obligation of the offeror pursuant to KRS 367.801(5)(c)3.

(g) The name and address of each supplier of the items the offeror is to deliver to the consumer/investor; and

(h) The following statement in the form below in no smaller than ten (10) point boldface print:

STATEMENT OF CONSUMER INVESTOR RIGHTS

1. You have thirty (30) business days in which you may cancel this contract for any reason.

2. To cancel, you must mail or deliver a written notice to (Seller's name and street address) before (last date to mail or deliver notice). If mailed, the notice must be

postmarked by the above date. If you deliver the notice, it must be delivered by the end of the normal business day on the above date.

3. We must promptly refund your payments, and within five (5) business days after you receive your refund, you must allow us to pick up anything we provided to you under this contract.

4. If we or our affiliates mislead you by what we say, or if we violate the Kentucky Business Opportunities Law, you may cancel this contract. To cancel, you must give written notice to us within one (1) year of the date of the contract.

5. If you cancel under this provision, you are entitled to a prompt refund of all amounts you have paid, less the value of items we delivered that you do not return.

6. If we do not deliver items promised within thirty (30) days of the delivery date in your contract except for reasons beyond our control, you may cancel this contract and receive an immediate refund of amounts paid, less the value of items you do not return.

(3) The offeror shall not take a negotiable instrument as evidence of the consumer's/investor's obligation unless the instrument on its face abrogates holder in due course status for its holder.

(4) The payment schedule in the agreement shall not require payment of more than twenty percent (20%) of the initial payment before delivery to the consumer/investor of the items to be supplied by the offeror, unless sums in excess of the twenty percent (20%) are placed in escrow until the consumer/investor advises the escrow agent in writing of the delivery of the items, or until the offeror presents the escrow agent with a bill of lading that proves timely delivery of the items. The consumer/investor shall not unreasonably withhold notice of delivery.

(5) A successor or assignee of the offeror's interest or rights in the agreement is subject to all equities, rights, and defenses of the consumer/investor against the offeror.

(6) Until the offeror has complied with this section, the buyer may cancel the purchase of a business opportunity by notifying the offeror in any manner and by any means of his intention to cancel.

(7) Any waiver by the consumer/investor of a business opportunity of the rights provided in this section is null and void and will not operate to relieve the offeror of any obligation placed upon him by KRS 367.801 to 367.819.

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Restraining Order, Right To Cancel

367.817 RESTRAINING ORDER

Whenever the Attorney General has reason to believe that any person is offering business opportunities for sale in violation of KRS 367.801 to 367.819 and 367.990, and that proceedings would be in the public interest, he may move in the name of the Commonwealth in a Circuit Court for a restraining order or temporary or permanent injunction to prohibit such offer. The action may be brought in the Circuit Court of the county in which such person resides or has his principal place of

business or in the Circuit Court of the county in which the unlawful offer or sale has been or is about to be committed.

367.819 CANCELLATION BY PURCHASER

(1) The purchaser of a business opportunity has the right to cancel as set forth in this chapter as well as the right to cancel such purchase for any reason at any time prior to midnight of the thirtieth calendar day after signing a contract for purchasing the business opportunity. In addition, the purchaser may cancel such purchase at any time for the following violations:

- (a) Not providing locations as represented;
- (b) Failing to deliver goods or merchandising materials as represented; or
- (c) Failing to comply with KRS 367.809(2).

(2) Cancellation occurs when the consumer/investor gives written notice to the offeror at the address given in the purchase agreement or otherwise provided by the offeror and the notice and statement of the buyer's right to cancel provided for in subsection (1) of this section.

(3) Notice of cancellation, if given by mail, is given when it is deposited in the mail properly addressed and postage prepaid.

(4) Notice of cancellation given by the purchasers need not take a particular form and is sufficient if it indicates by form of written expression the intention of the buyer not to be bound by any contract to purchase the business opportunity.

(5) Within fifteen (15) days after the date of notice of cancellation by the consumer/investor, the seller must tender to the consumer/investor any payments as well as shipping costs made by him and terminate all financial obligations created in connection with the purchase of the business opportunity. Within five (5) days of refund, the consumer/investor shall make available to the offeror the items delivered by the offeror.

(6) Any waiver by the consumer/investor of a business opportunity of the rights provided in this section is null and void, and will not operate to relieve the seller of any obligation placed upon him by this section.

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